APPENDIX

APPENDIX A

Opinion

United States Court of Appeals
For the Eighth Circuit

No. 73-1681

Weidinger Chevrolet, Inc., Appellee,
v.
Universal C.I.T. Credit Corporation, Appellant.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: February 12, 1974

Filed: July 31, 1974

Before Mehaffy, Chief Judge, Gibson and Webster, Circuit Judges.

Webster, Circuit Judge.

This case presents for our review under the Uniform Commercial Code the scope and application of a security agreement granting a floor plan lender a broad security interest in the motor vehicle inventory of an automobile dealer with multiple locations and sources of financing.

Jim Swanson, not a party to this litigation, was a used car dealer in Belle, Missouri. Commencing in 1964, he financed the purchase of his used car inventory through a floor plan ar-

rangement with GMCO Agency, Inc. of Vienna, Missouri. Under the terms of the floor plan, Swanson delivered a note and title to each new car which he purchased, and GMCO issued him a check in the amount of the note. Ten per cent of the principal balance of the note was due in 90 days. Leonard Weidinger owned a one-third interest in GMCO and together with his wife owned all of the shares of Weidinger Chevrolet, Inc. Swanson had a side arrangement with Weidinger under which Swanson from time to time relieved his maturing obligations to GMCO by assigning used cars to Weidinger Chevrolet. Weidinger Chevrolet would then issue its note to GMCO in release of Swanson's note. Cars which Weidinger Chevrolet acquired in this manner were frequently left on Swanson's used car lot and were sold by him on a commission basis.

In 1968, Swanson acquired a Chrysler-Plymouth Agency at a different location. For the purpose of financing the new car agency, Swanson entered into an "Agreement for Wholesale Financing" with Universal C.I.T. Corporation (C.I.T.). C.I.T. knew that GMCO had a floor plan agreement with Swanson and did not intend to floor plan Swanson's used cars. On March 21, 1968, C.I.T. filed a financing statement executed by Swanson in favor of C.I.T. as the secured party and specifically disclosing a security interest which covered, *inter alia*:

> (i) The following types of inventory, both new and used: automobiles, buses, trucks, truck tractors; trailers and semi-trailers; mobile homes, farm tractors and other farm equipment; boats, boat motors and other marine products and equipment * * *; (ii) leases covering any of the foregoing; and (iii) accounts and contracts rights now or hereafter owing to the debtor.

In December, 1969, C.I.T. discovered that Swanson had sold a substantial number of new Chryslers and Plymouths "out of trust"—that is without having paid C.I.T. in accordance with the terms of the security agreement. C.I.T. promptly brought a

replevin action under Missouri law asserting an immediate right to possession under its "Agreement for Wholesale Financing." C.I.T. caused all of the cars thus seized to be sold, including 22 cars which had previously been assigned to Weidinger Chevrolet. Weidinger Chevrolet thereafter brought this suit to recover the value of the cars alleged to have been converted unlawfully by C.I.T. In a trial to the court without a jury, the District Judge[1] found in favor of Weidinger Chevrolet and awarded actual damages of $34,290 and prejudgment interest of $7,200. It is from this judgment that C.I.T. appeals.

In an unpublished opinion and judgment, the District Judge intimated that by its course of dealing C.I.T. had waived its lien on the automobiles "by treating Swanson's second hand car business as completely separate from the new car business which [C.I.T.] was financing." He based his decision, however, upon the following clause which appears in the Agreement for Wholesale Financing:

> You shall have all the rights of a secured party under the Uniform Commercial Code or at common law or in equity or under any other statute or under this agreement. Your rights and remedies hereunder shall be cumulative. It is agreed that new and used automobiles, trucks, . . . are the subject of widely distributed standard price quotations and are customarily sold on and in a recognized market. A private sale of any chattel to a dealer in such types of chattels for the amount we originally paid for such chattel or at any lesser fair price is a commercially reasonable disposition thereof.

The District Judge construed this clause as an authorization to Swanson to make a reasonable disposition at a private sale of any of the cars secured by the agreement, free of any of its

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[1] Honorable William Collinson, United States District Judge for the Eastern and Western Districts of Missouri.

provisions. Since C.I.T. agreed that the 22 cars involved were worth far less than Weidinger Chevrolet had paid for them, the earlier sales of the cars by Swanson to Weidinger Chevrolet must have been a "commercially reasonable dispostion," and Weidinger Chevrolet therefore acquired title free of C.I.T.'s security interest.

In this appeal, C.I.T. contends that it had a valid security interest in Swanson's used car inventory superior to Weidinger Chevrolet's claimed interest and that it did not waive, nor was it estopped from, asserting its interest. Further, C.I.T. contends that even if Weidinger Chevrolet acquired the cars in question from Swanson free of C.I.T.'s security interest, it resubjected the cars to the security interest by leaving the cars on Swanson's lot for resale.

Jurisdiction was based upon diversity of citizenship between C.I.T., a citizen of Delaware, and Weidinger Chevrolet, a citizen of Missouri. We apply the law of Missouri, which has adopted the Uniform Commercial Code.[2]

Acquisition of Security Interest

The first question presented is whether C.I.T. acquired a perfected security interest in the used cars which were subsequently replevied and sold. It is undisputed that GMCO made no attempt to file or otherwise perfect its own security interest, and we are therefore not confronted with a question of priority of liens.

No attack is mounted upon the sufficiency of the security agreement[3] and financing statement. Indeed the essential ele-

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[2] V.A.M.S. Chapter 400. References to sections under this Chapter correspond to article and section numbers of the Uniform Commercial Code.

[3] The Agreement for Wholesale Financing provides that in event of any breach of its terms by debtor, or of any act of bankruptcy, or

ments are fully set forth. The description of the inventory in the financing statement is more than adequate notice. Nor is it significant that the automobiles were located on a Swanson used car lot rather than at the agency. It is only required that the financing statement reflect the signatures of the parties, give the address of the secured party from which information concerning the security interest may be obtained, give a mailing address of the debtor and contain a statement indicating the types, or describing the items, of collateral. V.A.M.S. § 400.9-402. Moreover, the security agreement itself refers to "All our inventory and equipment, wherever located. . . ."

Notwithstanding the sufficiency of the security agreement, the District Judge found that language in the security agreement authorizing a commercially reasonable disposition of chattels constituted an express waiver by C.I.T. of its lien, provided the sale was a "commercially reasonable disposition."[4] In so holding, the District Judge read the "commercially reasonable disposition" clause entirely out of context and erroneously interpreted this provision. The clause grants to C.I.T. "all the rights of a secured party under the Uniform Commercial Code. . . ." Section 9-504(1) of the Uniform Commercial Code authorizes the sale of collateral, in event of default, provided the disposition is "commercially reasonable."[5] The clause upon which the Dis-

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if C.I.T. in good faith deems the indebtedness or the chattels unsecure:

> (3) You shall have a security interest in all our inventory and equipment, wherever located and whether or not financed hereunder, and you shall have the same rights with respect thereto, including removal, as you have to chattels hereunder.

[4] Quoted in text *supra* p. 3.

[5] V.A.M.S. § 400.9-504 provides:

> (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or

trict Judge relied simply provided that a private sale of a chattel to a dealer in such types of chattels for the amount originally paid by Swanson for such chattel or at a lesser fair price would be a "commercially reasonable disposition thereof." It obviously referred only to a disposition by C.I.T. in the event it exercised its right as a secured party to dispose of the collateral and thereby assured the debtor that a fair price would be obtained for the chattels used to reduce or satisfy the debt.

While the District Judge predicated his finding of waiver upon express language in the security agreement, he also indicated that he would be "inclined to find that by this course of dealing the defendant [C.I.T.] had waived its lien entirely by treating Swanson's second hand car business as completely separate from the new car business which defendant was financing." Since we reject the express waiver theory, we must deal briefly with the trial court's alternative comment. The court found that C.I.T. had refused to finance the used cars, was aware that they were being financed elsewhere and made no effort to determine whether Swanson was selling the used cars in the "ordinary course of business". While the Uniform Commercial Code does not preclude the application of principles of implied-in-law waiver or estoppel,[6] such findings do not support a legal conclusion based upon either theory. *See* V.A.M.S. § 400.9-205. The security agreement extends to automobiles, whether or not financed by C.I.T. The court made no finding, nor do we per-

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following any commercially reasonable preparation or processing. . . .

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(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. . . .

* * * * * * * *

[6] V.A.M.S. § 400.1-102; § 400.1-103.

ceive anything from the record from which the court could find that Weidinger Chevrolet relied upon the course of dealing between C.I.T. and Swanson to its detriment. Nor was there any evidence of any side agreements between the parties from which waiver may be inferred.

Sales to Weidinger Chevrolet

Having determined that C.I.T. acquired a valid security interest in the Swanson used cars, which was not waived by express agreement or course of conduct, we next consider the legal effect of the sales from time to time by Swanson to Weidinger Chevrolet for the purpose of reducing Swanson's legal obligation to GMCO. The security agreement authorized Swanson "to exhibit and to sell each chattel only to buyers in the ordinary course of business."[7] C.I.T. was aware of sales by Swanson to Weidinger Chevrolet. There is no evidence that these sales were at less than arms length and no contention of fraud appears.[8] The finding of the court that the prices paid for the

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[7] V.A.M.S. § 400.1-201(9) provides:

(9) 'Buyer in ordinary course of business' means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. 'Buying' may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

[8] C.I.T.'s reliance on *Commercial Credit Corp. v. Joplin Automobile Auction Co.*, 430 S.W.2d 440 (Mo. App. 1968), is misplaced. In that case an auctioneer who had handled arms length sales in the past was held not to be a buyer in the ordinary course of business because it was only acting as an agent and also because the transfer was made to satisfy a debt to the auctioneer. Here, the transfer was in aid of liquidating a debt to a third party—GMCO, but was not "in total or partial satisfaction of a money debt" to the buyer, Weidinger Chevrolet.

automobiles were fair is not clearly erroneous. From this it follows that while C.I.T. possessed a valid security interest in all of the cars, the sales by Swanson to Weidinger Chevrolet of the 22 cars at issue here was in the ordinary course of business and hence Weidinger Chevrolet acquired title free of such security interest. V.A.M.S. § 400.9-307(1).

The Consignment

We next turn to a consideration of the consignment of the automobiles by Weidinger Chevrolet to Swanson. As previously noted, Weidinger frequently allowed cars which had been acquired from Swanson under the side arrangement to remain on the Swanson lots to be sold on commission by Swanson.[9] Section 2-326 of the Uniform Commercial Code[10] provides in part:

> (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is
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> * * * * * * * *
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> (b) a 'sale or return' if the goods are delivered primarily for resale.
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> (2) Except as provided in subsection (3), * * * goods held on sale or return are subject to such claims while in the buyer's possession.

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[9] Leonard Weidinger testified that Swanson would contact him with respect to a prospective customer for one of the cars acquired by Weidinger Chevrolet; Weidinger would set a price; Swanson would call back and direct how to make out the bill of sale; and, according to Weidinger, "He would give me what I wanted, I don't know what he got from the customer." Sometimes Swanson paid GMCO the amount due on the car and settled the balance with Weidinger Chevrolet at a later time.

[10] V.A.M.S. § 400.2-326.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as 'on consignment' or 'on memorandum'. However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the article on secured transactions (article 9).

In *Mann v. Clark Oil & Refining Corp.*, 302 F. Supp. 1376 (E.D. Mo. 1969), *aff'd per curiam*, 425 F.2d 737 (8th Cir. 1970), a trustee in bankruptcy sued defendant oil company to set aside certain preferential transfers by bankrupt to defendant. Of particular concern was the repossession of $630 worth of gasoline in bankrupt's possession under a "consignment" contract with defendant. The court held that §2-326 was applicable and therefore the only question was whether bankrupt's business was conducted under the oil company's name or his own. Finding the business was under bankrupt's name, the court held that the gasoline was subject to the interest of general creditors. The court also held that the consignment agreement was actually a security agreement and, since not perfected un-

der the Code, was subordinated to the interest of a creditor holding a judicial lien.

Weidinger Chevrolet neither posted signs nor complied with the filing provisions of Article 9 of the Uniform Commercial Code. Nor did plaintiff establish that Swanson was "generally known by his creditors to be substantially engaged in selling the goods of others." Upon this record we hold that the 22 cars, although owned by Weidinger Chevrolet, were in the possession of Swanson under circumstances deemed to be a "sale or return", and hence subject to the claims of Swanson's creditors. C.I.T.'s previously perfected security interest reattached to such cars as inventory subject to such interest.[11]

The Fuentes Defense

On this appeal, plaintiff contends that even if the court's findings and decision were erroneous, the Missouri statute under which the automobiles were seized is unconstitutional and therefore plaintiff's motion for summary judgment should have been sustained. This contention is without merit.

The Missouri replevin statute, V.A.M.S. chapter 533, is a possessory action. By following its procedure, C.I.T. was en-

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[11] *See* V.A.M.S. § 400.9-204(3). Professor Ray David Henson, discussing what is sometimes called the Mississippi River theory of inventory and accounts financing, writes:

> Within our terms of reference, "a security agreement may provide that collateral whenever acquired, shall secure all obligations covered by the security agreement." This is in line with the pre-Code law of many states in various areas, and raises no significant problems. It is true that a security interest cannot attach until the debtor has rights in the collateral. Once the interest attaches, however, when the collateral is inventory (as inventory would normally be understood), it very clearly continues, although the quantity and possibly even the quality of the inventory may, as does Huck Finn's river, undergo constant change. (footnotes omitted)
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> R. D. Henson, *Secured Transactions Under the Uniform Commercial Code* 132 (1973).

abled to obtain possession of the automobiles without a pre-seizure hearing. Plaintiff contended in its motion for summary judgment that such seizure was in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and in violation of Article I, Section 10 of the Missouri Constitution. *See Fuentes v. Shevin*, 407 U.S. 67 (1972). The Missouri Supreme Court, in *State ex rel. Williams v. Berrey*, 492 S.W.2d 731 (Mo. en banc 1973), declined to hold chapter 533 facially unconstitutional. It did, however, hold that a seizure under the statute *pendente lite* must be preceded by a court hearing which will satisfy the requirements of *Fuentes*. Plaintiff cites other cases in which similar statutes have been held to be unconstitutional. *McClellan v. Commercial Credit Corp.*, 350 F. Supp. 1013 (D. R.I. 1972), *aff'd sub nom. Georges v. McClellan*, 409 U.S. 1120 (1973); *Gunter v. Merchants Warren National Bank*, 360 F. Supp. 1085 (D. Me. 1973).

It would be inappropriate for us, upon this record, to pass upon the constitutionality of the Missouri replevin statute. *Fuentes* was a civil rights action in which damages were sought for breach of plaintiff's civil rights. *Berrey, supra*, was a mandamus action in which the court ordered restoration of possession because of the defective order of possession in the case below. *Fuentes* is here raised as a shield, rather than as a sword, and the defense comes too late. Had C.I.T. acquired possession of the automobiles through self-help, as they had a clear right to do under the security agreement and under the Uniform Commercial Code,[12] plaintiff could not have compelled.[13] A flaw in the means of acquisition does not impair

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[12] V.A.M.S. § 400.9-503.

[13] *Nichols v. Tower Grove Bank*, No. 73-1621 (8th Cir., May 13, 1974); *Nowlin v. Professional Auto Sales, Inc.* and *Mayhugh v. Bell Allen Chevrolet Co.*, Nos. 73-1348 and 73-1450 (8th Cir., April 25, 1974). *See Bichel Optical Laboratories, Inc. v. Marquette National Bank of Minneapolis*, 487 F.2d 906 (8th Cir. 1973).

the validity of the security interest or C.I.T.'s right to dispose of the property as permitted by the security agreement, which vested C.I.T. with all of the rights of a secured party under the Uniform Commercial Code. *See* V.A.M.S. §400.9-205. A proper challenge to the Missouri replevin statute, on constitutional grounds, should await a more appropriate vehicle, and we decline to pass upon it here.

Judgment reversed.

APPENDIX B

In the United States District Court for the
Western District of Missouri
Southern Division

Weidinger Chevrolet, Inc., a Corporation, Plaintiff, vs. Universal C.I.T. Credit Corporation, a Corporation, Defendant.	Civil Action No. 2597

Opinion and Judgment

(Filed June 27, 1973)

The plaintiff corporation is a Chevrolet agency in Vienna, Missouri. The president and sole stockholder (with his wife) of this company owns one-third of the stock of, and is an officer of GMCO Agency, Incorporated, a loan company located in the same town.

In September of 1964 this loan company entered into a floor plan agreement with Jim Swanson, a second hand car dealer located in Belle, Missouri; and "floor planned" his stock of used cars from then until the situation arose which caused this suit.

Mr. Swanson signed individual notes on each car floor planned, and delivered the Missouri title to the cars either assigned in blank, or to him, to the loan company, which held it until the car was sold and the note paid. The floor plan agreement required all notes to be reduced by 10% at the end of

a ninety-day period. There was no security agreement covering this arrangement ever filed for record.

In March of 1968, Swanson secured a Chrysler-Plymouth dealership and entered into a floor plan agreement with the defendant Universal C.I.T. This was a printed form dealing mostly with the financing of new cars as they were obtained from the factory, but also contained a provision creating a security interest in all of Swanson's inventory and equipment, whether or not it was financed under the agreement. This "agreement for wholesale financing" was filed of record by the defendant.

At the time Swanson entered into this agreement with Universal C.I.T. the latter had full knowledge that Swanson was financing his entire used car inventory with GMCO, and Universal C.I.T. refused to furnish financing of Swanson's used car inventory. There is no question that after this refusal Universal C.I.T. had full knowledge that Swanson was "floor planning" his second hand cars with GMCO, and made no objection to this continuing arrangement and course of dealing between GMCO and Swanson.

If Swanson had difficulty selling a second hand car, or didn't want to pay the 10% reduction of the principal of a loan on a particular car at the end of ninety days, he would call Weidinger and offer to sell him the car for the amount of the loan with GMCO. If Weidinger accepted, he would deliver to GMCO a Weidinger Chevrolet note for the same amount Swanson owed. Swanson's note would be cancelled and returned to him, and he would transfer the title of the car (still held by GMCO) to Weidinger Chevrolet. Frequently the car was left on one of Swanson's used car lots (he had two in towns other than Belle) and Swanson would receive a commission if he sold the car for Weidinger. There is no evidence that Universal C.I.T. had any knowledge of those transactions.

The evidence did show that it is not unusual for one second hand dealer to have a car for sale on another dealer's lot, and to pay a commission to the other dealer if he sold the car.

In December of 1969, Universal C.I.T. discovered that Swanson had sold about $52,000 worth of new Chryslers and Plymouths which it had floor planned, and he had not paid off the indebtedness to Universal C.I.T. on any of these cars. This is called "S.O.T." (sold out of trust) in the industry, and causes a great deal of exictement when discovered by the finance company.

Universal C.I.T. immediately replevined all used cars on Swanson's three lots, asserting a first lien under its "agreement for wholesale financing." Twenty-two of these cars were titled in the name of the plaintiff, Weidinger Chevrolet. When informed of this fact, immediately after the seizure, defendant refused to return the cars to Weidinger and has sold them and retained the proceeds. This suit is for the value of the cars which defendant converted to its own use.

All twenty-two of the cars in question had been floor planned for Swanson by GMCO. Prior to the date of taking Weidinger Chevrolet had executed its note for the amount of the floor plan note of Swanson; Swanson's note had been cancelled and returned; and all the certificates of title had been assigned to Weidinger Chevrolet.

The defendant argues that, in some way, the sale of these cars by Swanson to Weidinger was fraudulent and resulted from a conspiracy between GMCO, Weidinger and Swanson to defraud Swanson's creditors. There is absolutely no evidence to support this contention, and the Court specifically finds that these transactions were legitimate, arms length dealings between the parties involved. Weidinger's financial position was much stronger than Swanson's and GMCO was happy to receive its note in place of Swanson's. Swanson had received the full loan value of the car

(and sometimes more than "book" loan value) in cash, and was in financial trouble in 1969, and was satisfied to transfer the title and be relieved of his obligation to pay interest and reduce the principal. If Weidinger thought the car was a good buy for the amount loaned against it, the car was bought.

All the parties agree that the alleged lien of the defendant on Swanson's inventory of cars held for resale could not be asserted against a purchaser for value in the ordinary course of business. But the defendant argues that these sales to Weidinger Chevrolet did not fall in this category. The evidence, however, clearly indicated that dealers frequently "wholesale" cars back and forth between themselves in the ordinary course of business.

This defendant, for over a year and a half, after the financing agreement with Swanson knew that he was actively engaged in the second hand car business, since he had three used car lots. The defendant claims now to have had a lien on all of Swanson's second hand cars during this period of time, but never asked him to account for any of the proceeds of the sale of a single used car during that entire period of time. Nor did the defendant investigate whether Swanson was selling the cars in the "ordinary course of business" as defendant interprets this phrase, that is, one at a time at retail to individuals, or in wholesale lots to other dealers.

The defendant further knew that Swanson was borrowing money on all this second hand car inventory from GMCO, and approved of this procedure. In fact, it made inquiries of GMCO as to whether Swanson was paying promptly. This Court would be inclined to find that by this course of dealing the defendant had waived its lien entirely by treating Swanson's second hand car business as completely separate from the new car business which defendant was financing. It could certainly be argued that by this course of conduct the defendant would be estopped from asserting a lien against a party in the shoes of Weidinger who knew of the conduct of Universal C.I.T.

However, this case can be decided under the plain words of the "agreement for wholesale financing," dated March 8, 1968, upon which defendant relies for its lien. One paragraph of that agreement states:

> "You (Universal C.I.T.) shall have all the rights of a secured party under the Uniform Commercial Code or at common law or in equity or under any statute or under this agreement. Your rights and remedies hereunder shall be cumulative. It is agreed that new and *used* automobiles, trucks, . . . are the subject of widely distributed standard price quotations and are customarily sold on and in a recognized market. A private sale of any chattel *to a dealer in such types of chattels* for the amount we (Swanson) originally paid for such chattel or at any lesser fair price is a commercially reasonable disposition thereof."

The above wording, which is the defendant's own language in its printed form, clearly recognizes and authorizes the wholesaling of used cars to another dealer in used cars. The only meaning that can be attributed to this language is that Universal C.I.T. waives its lien (created in the paragraph immediately preceding the quoted language) if the sale is a "commercially reasonable disposition."

Since Universal C.I.T. introduced evidence (on the damage issue) that the twenty-two cars involved were worth far less than the amount plaintiff paid for each of them, it cannot claim that the price paid was not fair as far as Swanson was concerned.

The Court finds that the plaintiff was the owner of the twenty-two cars in question at the time defendant seized and converted them, and that defendant had no valid and enforceable lien superior to plaintiff's title.

The evidence on the value of the cars at the time of the conversion was scanty. After its precipitous action in seizing the

cars, the defendant stored them in an open field, for about five months of severe winter weather, without any protection from the elements or vandals. The defendant made no appraisal of the cars at the time of taking, and did not even record the physical condition of them. Defendant's witnesses testified that all the cars but one were driven off under their own power, but there is no evidence whether the one that was towed simply had a dead battery or a missing motor.

Plaintiff's evidence, based on the NADA book values, and plaintiff's president's personal appraisal, fixed the reasonable value of the cars at $34,290. This is corroborated by the total of the notes signed by plaintiff for the purchase of the cars. The Court finds that the reasonable market value of the twenty-two cars at the time of taking was $34,290. The Court computes the interest on this sum, at 6%, since the date of taking at $7,200.

The Court finds the issues on plaintiff's claim for punitive damages against plaintiff, and the issues on Defendant's counter-claim against the defendant.

Ordered that plaintiff be, and is hereby, awarded a judgment against the defendant in the amount of $41,490. Costs taxed to defendant.

/s/ WILLIAM COLLINSON
District Judge

APPENDIX C

United States Court of Appeals
For the Eighth Circuit

September Term, 1973

Weindinger Chevrolet, Inc.,
Appellee,
vs.
Universal C.I.T. Credit Corp.,
Appellant.
No. 73-1681.

Appeal from the United States District Court for the Western District of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellee, and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

August 21, 1974

APPENDIX D

United States Court of Appeals
For the Eighth Circuit

Weindinger Chevrolet, Inc.,
Appellee,
vs.
Universal C.I.T. Credit Corp.,
Appellant.
No. 73-1681.

Appeal from the United States District Court for the Western District of Missouri

On motion of appellee, it is now here ordered that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from this date. If within that time there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certirari has been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

September 3, 1974